

IV. WHEN DOES A ROAD CONSTITUTE A LOT LINE?

Lots of armchair lawyers out there “just know” that, even when the same owner owns land on both sides of a highway, the highway always constitutes an *automatic* “grandfathered” lot line - meaning that the owner can sell the land on one side separately from the land on the other side, even without subdivision approval. ***But in reality this is not always true!***

[This belief seems especially prominent among professional assessors. Many a town, upon hiring a company to re-do its tax map, has found, alas, that the new tax map has ostensibly, without any subdivision approval, created new lots - many of them substandard - because of the company's belief that a road is always a lot line.]

RSA 75:9 (amended 1995) says that In determining whether or not contiguous tracts are separate estates (for tax purposes), the selectmen or assessors shall give due regard to whether the tracts can legally be transferred separately under the provisions of the subdivision laws ...” Thus it is clearly wrong for an appraiser to automatically treat land separated by a road as separate lots for tax purposes. Appraisers must look to the subdivision laws.

A. FUTURE ROADS - NO SUBDIVISION CREATED..

The issue of when a road creates a lot line was clarified, at least for future ***new*** roads and easements, by RSA 674:54, as added by Ch. 262 of the Laws of 1996. This statute governs when governmental uses of land will be subject to a local hearing by the planning board, With respect to highways (which of course are a governmental land use), paragraph HI of the statute says:

"III. This section shall not apply to the layout or construction of public highways of any class, or to the distribution lines or transmission apparatus of governmental utilities, provided that the erection of a highway or utility easement across a parcel of land, shall not, in and of itself, be deemed to subdivide the remaining land into 2 or more lots or sites for conveyance or development purposes in the absence of subdivision approval under this title."
(italics added)

In the future, therefore, the answer to the question of whether a road constitutes a lot line will be like asking which came first, the chicken or the egg: If the land starts out in common ownership, and a highway (or utility easement) is laid out through it, that highway does ***not*** constitute any sort of lot line in the absence of subdivision approval. If, on the other hand, the road is there first, and a person who owns land on one side happens to acquire land on the other, those two tracts do ***not*** “merge (at least not without a voluntary “merger” tinder RSA 674:39-a), and the road ***will*** continue to constitute a lot line.

B. TODAY'S EXISTING ROADS - ARE THEY LOT LINES?

Folks who think a road automatically constitutes a lot line arises often point to the case of *Keene v. Town of Meredith*, 119 NI-I. 379 (1979). But that case says no such thing. In fact the Court there used an all-of-the-circumstances analysis. Mr. Keene bought two parcels of land separately, on either side of an existing road. The Town treated the land for tax purposes as two lots, and had in fact previously issued a building permit for a house on one of the lots, knowing there was already a house on the other! There was no evidence the lots had ever been used in conjunction with each other. The court did decide that the lots were separate. But the key factor in the decision was the history of the owner's *use* of the land.

In my opinion there are many parcels with, say, a house on one side of a road and a barn on the other, used for a single use, and owned by the same owner since the first European settlement, where the road would surely *not* be considered a “grandfathered” lot line. Two key questions can be distilled from the cases: (a) Has the owner *used* the properties in conjunction with each other (for example a farm or lumber yard straddling the road)? if so, the land is probably one single lot despite the road. (b) Have the two sides of the road been owned by the same person since before the highway was created? - if so, the land is probably still a single lot despite the road. [*Keene v. Meredith*, supra; *Robillard v. Hudson*, 120 N.H. 477 (1980); *Appeal of Loudon Road Realty Trust*, 128 NI-I. 624 (1986); *Mudge v. Precinct of Haverhill Corner*, 133 N.H. 881 (1991); also see Rathkopf's “Law of Zoning & Planning at §64.03(2)(a).]